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Attorney General
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Phoenix, Arizona 85007

Robert R. Corbin

November 20, 1980

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ARIZONA ATTORNEY GENERAL

INTERAGENCY
Mr. Bill Blackledge, Administrator
Board of Pesticide Control
1624 West Adams, Suite 103
Phoenix, Arizona 85007

Re: I80-194 (R80-210)

Dear Mr. Blackledge:

This is in response to your request of July 22, 1980, for clarification of the following issues:

1. Does the Board of Pesticide Control have the statutory authority to compel a manufacturer of pesticides to modify or change a product label approved and registered by the U.S. Environmental Protection Agency pursuant to FIFRA 1972, as amended?1/
2. In light of the fact that the Legislature appears to have given all labeling authority relating to pesticides to the Office of the State Chemist, does the Board have the authority to direct a request to that office to effect a label modification or change limited to the use of the product in Arizona?

The Board of Pesticide Control (hereinafter "Board") does not have statutory authority to compel a modification or change in the labeling of pesticides. A.R.S. § 3-372.01.A. provides:

The board shall make and enforce all rules, regulations and orders necessary to carry out the purposes of this article in order to regulate the sale and use of pesticides.
(emphasis added)

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1. FIFRA 1972, as amended, refers to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136a. et seq.

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See also Ariz.Att'yGen.Op. No. 179-218. The authority to regulate the information required on pesticide labels is committed to the State Chemist pursuant to A.R.S. §§ 3-343.E. and 3-352.A.5. See also Ariz.Att'yGen.Op. Nos. 67-26 and 180-187.

With respect to your second question, since the State Chemist is solely responsible for pesticide labeling requirements, this is the office to which such requests should be directed. If the Board believes that a labeling change related to pesticide use would assist it in carrying out the purposes of A.R.S. §§ 3-371 et seq., such a request may be made. While the Board cannot require the State Chemist to make a change, the State Chemist does have authority to cooperate with the Board in carrying out the purposes of A.R.S. §§ 3-341 et seq. See also Ariz.Att'yGen.Op. No. 180-187.

In summary, although the Board does not have authority to compel the change or modification of a pesticide product label; the Board may recommend a label modification relating to pesticide use to the State Chemist.^{2/}

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

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2. You also asked whether a particular Board Committee recommendation with respect to a pesticide made on June 20, 1980 constitutes a labeling change or regulation of use of a pesticide. The recommendation stated, in part: "that the ENVIRONMENTAL HAZARDS section of the label for PENNCAP M be changed to read in part as follows: 'THIS PRODUCT IS HIGHLY TOXIC TO BEES exposed to direct treatment or residues on crops or blooming weeds. Do not apply this product or allow it to drift to blooming crops or weeds.'" Although the content of the modification relates to use ("Do not apply this product or allow it to drift to blooming crops or weeds."), the motion itself was couched in language relating to a label change and thus must be considered a modification of the label. However, since the Board has authority to regulate the use of pesticides, a regulation restricting the use of a particular pesticide could be promulgated by the Board.